

ONTARIO SUPERIOR COURT OF JUSTICE
IN THE COURT OF THE DRAINAGE REFEREE

CITATION: Brzeczka v Niagara on the Lake (Town), 2022 ONDR 1

DATE OF DECISION: 2022-10-19

FILE NUMBER: 2022-01

Court File No.: CV-21-00059991-0000 (St. Catharines)

Court File No.: CV-21-00059992-0000 (St. Catharines)

BETWEEN:

MARYANN BRZECZKA and WILLIAM MICHAEL BRZECZKA
Appellants

-and-

THE CORPORATION OF THE TOWN OF NIAGARA ON THE LAKE
Respondent

-and-

OTHERS WHO MAY BE GRANTED PARTY STATUS UPON
APPLICATION

PEGGY LYNN WATSON

Appellant

-and-

THE CORPORATION OF THE TOWN OF NIAGARA ON THE LAKE
Respondent

-and -

OTHERS WHO MAY BE GRANTED PARTY STATUS UPON
APPLICATION

DECISION ON THE MOTION

APPEARANCES:

Sullivan Mahoney LLP
40 Queen Street, P.O. Box 1360 St. Catharines, On. L2R 6Z2
Thomas A. Richardson- Lawyer for the Appellants Peggy Lynn Watson, Maryann
Brzeczka and William Michael Brzeczka

Siskinds LLP
275 Dundas Street, Unit 1 London, ON. N6B 3L1
Paula Lombardi - Lawyer for the Respondent

This matter was commenced by a Notice of Appeal on behalf of MaryAnn Brzezka and William Michael Brzezka, Court File No. CV-21-00059991-0000 and Peggy Lynn Watson, Court File No. CV-21-00059992-0000, through a Notice of Appeal dated the 29th day of January 2021.

1. The grounds for the Appeal for both actions were identical and stated that the Applicants were dissatisfied with the Report of the Drainage Engineer on the grounds that it does not comply with the requirements of the Drainage Act, R.S.O., c.D17, by reason that:

"(a) The Petition upon which the Engineering Report is based is invalid;"

There were three other grounds set out in the Notice of Appeal which are not, at this point, before the Referee.

Appellants' Motion

2. The Notice of Motion dated November 1, 2021, states,

"THE MOTION IS FOR:

1. An Order of the Referee setting aside the Engineer's Report dated April 9, 2020 and the provisional by-law in this matter which is based upon the report of the engineer dated April 9, 2020 with respect to the Lament Drain, Town of Niagara-on-the-Lake, File No. 18-218, on the basis that the Petition in this matter is insufficient and does not comply with Section 4 of the *Drainage Act*;
2. An Order of the Referee awarding to the Appellants their costs of the appeals and the Motion in this matter; and
3. Such further and other relief as the Appellants may request and the Referee may allow."

Background as Described by Appellants

3. The property of the Appellant, Peggy Lynn Watson, is 835 York Road in the Town of Niagara-on-the-Lake, which is part of Township Lot 141, Concession 6. The Appellants,

Mary Ann Brzeczka and William Michael Brzeczka, are the owners of 834 York Road, in the Town of Niagara-on-the- Lake which is part of Township Lot 142, Concession 6.

4. The Petitioner, Stan Lament is the owner of two parcels. The main parcel at issue is a 17-hectare parcel of land on the East side of the Watson property municipally known as 865 York Road, being part of Lot 141, Concession 6, Niagara. Mr. Lament is also the owner of the parcel of land on the West side of the Watson property. The area of this property requiring drainage in accordance with the Engineer's Report is 4.6 hectares.
5. The Petition in the matter was dated May 7th, 2018, made by Stan Lament with regard to part Lot 141, Concession 6, Niagara, seeking "a deepening and widening of an existing watercourse, not currently a Municipal Drain". The Engineer's Report for the Lament Drain in the Town of Niagara-on-the-Lake was prepared by K. Smart Associates Limited dated April 9, 2020. As stated above, the project was initiated by a Petition signed by Stanley Lament as owner of 865 York Road, part of Lot 141. The Form 1: Petition for Drainage Works by Owners contained the following statement "The area of land described below requires drainage (provide a description of the properties or portions of properties that require drainage improvement)".

The additional response of Mr. Lament in Form 1 was "needs a better drain outlet at the west edge of pond located at 865 York Road".

6. As stated in the Motion, the issue between the parties is: What is the "area requiring drainage?"
7. The Motion deals with a number of issues which will be described further. At issue and described in the Report were erosion problems caused by water discharging through a culvert on to York Road, legal outlet for the proposed and existing tiling of the Petitioner, and whether the hectares shown on the Lament Drain drawing dated March 31, 2020, being Watershed Plan drawing 1 of 8, corresponds to the drawing shown on Page 3 of the report of K. Smart Associates Limited giving four different option for the drain, which has cross-hatching and a legend stating "area requiring drainage". **Note:** See Appendix A attached containing both drawings.

8. A further issue raised shown in the Engineer's Report under Schedule "A" - Schedule of Assessments Lament Drain is whether the properties assessed under the Drain, being the properties of W. and M. Brzezcka, S. Lament, P. Watson and S. Lament, all in Concession 6, were within the area requiring drainage, or was only the parcel Roll No. 019 10400, part of the "Lament East" property, the area requiring drainage?
9. In the Motion, which quotes from the Responding Record of the Corporation of the Town of Niagara-on-the-Lake, being the affidavit of Neal Morris, Paragraphs 57 to 61, in which Mr. Morris addressed what he referred to as an administrative error. In paragraph 60 of the Affidavit of Neal Morris dated September 30th, 2020, the Engineer who signed the Report in this matter requests an amendment to the Report to appropriately "reflect the Area Requiring Drainage identified on the map at Page 3 of the Engineer's Report". This changes paragraph 5 contained in the report and proposes to insert a different paragraph 5.
10. For ease of understanding the changes in the paragraph, I describe the paragraphs as follows:

5 Authority for Report:

Section 4 of the Drainage Act provides for the construction of new drainage works for an area requiring drainage. As a result of discussion at the site meeting and on-site examination, the area requiring drainage was determined to be Pt Lot 141, Concession 6, Niagara Twp., the properties owned by the petitioner, to provide a tile outlet. The signature on the petition represents 84% of the area requiring drainage and 66% of the owners; thus, the petition is valid in accordance with Sections 4(1)(a) and 4(1)(b) of the Drainage Act.

Proposed Amendment

5 Authority for Report:

Section 4 of the Drainage Act provides for the construction of new drainage works for an area requiring drainage. As a result of the discussion at the first site

meeting and on-site examination, the area requiring drainage was determined to be Pt Lot 141, Concession 6, Niagara Twp. The property owned by the petitioner requires a tile outlet for the 5.3 ha of agricultural land tile drained to a pond on Mr. Lament's property as shown in Figure 1. The signature on the petition represents 100% of the area requiring drainage and 100% of the owners; thus, the petition is valid in accordance with Section 4(1)(a) and 4(1)(b) of the Drainage Act.

11. Previously in his Affidavit, Mr. Morris asserted that the cross-hatched area found at page 3 of the Engineer's Report identifying an area of 5.4 hectares clearly identifies the entire Area Requiring Drainage.
12. The Appellants raised the point that page 3 of the engineer's report does not give an area. In the same Affidavit Mr. Morris indicates that the Appellant, Steve Watson, described the area as 5.3 hectares at the public meeting on this drain.
13. The juxtaposition of the two paragraph 5's from the report, actual and proposed, shows a different interpretation of Section 4 of the Drainage Act.
14. The Motion of the Appellants goes on to propose that the Referee has the authority to determine the validity of and set aside the provisional by-law relating to a drainage works under the Act. The Appellants proposed the evidence to be heard in this Motion include the Affidavit of Sid Vander Veen, sworn July 14, 2021, and the Affidavit of Neal Morris, sworn September 30th, 2021, previously described.
15. A further question is whether Mr. Morris knew of the 'administrative error' before the provisional By-law was passed. According to his cross-examination dated the 8th day of February 2022, questions 169, 170, 171 and 172, he was aware that the administrative error occurred.

"167. Q. And in your affidavit, paragraph 28, you refer to an administrative error. Has this administrative error been brought to the attention of the Town?"

- A. *Yes it has.*
168. Q. *How?*
- A. *Before we entered this process, we noted it and were trying to figure out a way to correct this administrative error.*
169. Q. *Let me be clear I understand what you said. You said, before we started this Process. What do you mean? Before the motion was brought?*
- A. *Before the Referee, appeal to the Referee.*
170. Q. *You noted the error then?*
- A. *Yes.*
171. Q. *Was this brought to the attention of the Town Council?*
- A. *No.*
172. Q. *Who was it brought to the attention of?*
- A. *The Drainage Superintendent.*
173. Q. *Mr. Ruck?*
- A. *Yes.*
174. Q. *All right. Has he reported the matter to Council?*
- A. *I don't know. "*
16. The Appellants, Watson and Brzeczka, through counsel argue that the Municipality through its Engineer, has attempted to redefine the area requiring drainage to prevent the Petition from being set aside as invalid.
17. The Appellants state that the historic area requiring drainage which is often viewed as a "saucer" with water coming from the edges towards an outlet has been altered by levelling taken behalf of the owner of Lament East property, Stanley Lament, which removed natural storage areas. There was further concern raised with regard to tiling as the tiling between vineyard rows is three meters as opposed to other agricultural standards. The Appellants' position is that the parcel being the Lament East property has three different outlets, the swale on the Watson land, York Road and a new private ditch, which according to the Appellants inlets into the pond on the Lament East property.

18. Further, it was argued by counsel that York Road should be part of the area requiring drainage, as the Drain actually traverses the York Road to its outlet, and the Drain on York Road is part of the design.
19. The Drain according to Mr. Morris's reports starts with a berm, pond and a water control structure on the Lament East parcel. The Appellants rely on the fact that, at onsite meetings in August of 2018, one of the options to be investigated were legal outlets provided for proposed and existing tile on the Lament East and Lament West property, indicating that it was in the mind of the Petitioner that both properties be served. It should be noted, however, that Mr. Lament did not change his Petition.
20. A further issue was raised by the Moving Parties that there was no area shown on the mapping on Page 3 of the Engineer's Report, in which the sketch having "cross-hatching" to indicate the "area requiring drainage" on the East Lament Lands to give an actual size. In contrast, the Appellants argue the unamended Section 5 of the Engineer's Report stated, "the signature on the Petition represents 84% of the area requiring drainage and 66% of the owners; thus the Petition is valid in accordance with Sections 4(1)(a) and 4(1)(b) of the *Drainage Act*." The percentages arrived at would confirm that the Lament West property being 4.6 hectares and the Lament East being 17 hectares represents the 84% where the Watson property represents 16%, again indicating that the original intent was that the "area requiring drainage" be all three properties.
21. Schedule "A" to the Engineer's Report "Schedule of Assessments Lament Drain" lists all three properties described in the background in part Lot 141, Con. 6, Niagara-on-the-Lake, as assessed for benefit, thus equating 'benefit' to 'area requiring drainage' according to the Appellants.
22. The Appellants retained Sidney Vander Veen, a Drainage Engineer, to provide a report in response to the K. Smart Associates Limited Report. Mr. Vander Veen's report, which I describe briefly and will be expanded upon, posits that the area requiring drainage consists of the following:
 - (a) The East Lament Parcel which needs and improved outlet;
 - (b) The Watson Land which have drainage issues;

- (c) The West Lament Parcel which does not have legal outlet;
- (d) York Road, which has accepted collected surface water into the roadside ditches and is further collecting water and discharging it into the Brzezka Land; and
- (e) The Brzezka Lands, which are experiencing erosion caused by the concentrated discharge of water directed onto them from York Road.

Position of the Respondent

- 23. The Respondent's position in this matter was that the Engineer, Neal Morris, in accordance with his obligations under Section 8 and 9 of the Drainage Act held three on-site meetings, a scoping meeting, a landowners' meeting, meetings with the Niagara Peninsula Conservation Authority, the Department of Fisheries and Oceans, together with his own investigations of the lands described in the Petition.
- 24. According to Mr. Morris, upstream flooding from the watershed being overland flows from the Lament East lands and those escaping an existing berm around Highway 405, were the concerns of Mr. Lament. It is the position of the Respondent that Mr. Lament signed the Petition, and as a result it met both requirements under Section 4(a) and 4(b) of the *Drainage Act* based on the Engineer's finding that there were no other owners of land requiring drainage and that he owned 100% of the land requiring drainage. It was the Municipality's position that there was no reason to interfere with Mr. Morris's determination of the validity of the Petition.
- 25. According to Mr. Morris, in his cross-examination, his determination of the area requiring drainage was a fairly involved process, including examination of "soil maps, aerials, historic aerials, getting the plan information from the landowners, as well as the first on-site meeting discussions with the landowners, and then subsequent meetings with the adjacent landowners."
- 26. Mr. Morris also noted that he consulted other more senior Engineers at his office. It is the Respondent Municipality's position that a sole homeowner or property owner may constitute a valid Petitioner.
- 27. While the Engineer acknowledged "an administrative error", it was the position of the Municipality that it did not alter, amend or change the Area Requiring Drainage, which

was clearly labelled in Page 3 of the Engineer's Report as the cross-hatched area located within the larger watershed. The Respondents took the position that the watershed and/or drainage area and the "area requiring drainage" are considered separate terms for purposes of a Section 4 Petition. In *David Adams Municipal Drain (re)*, 2012 ONAFRAAT 18 (CanLII), from which I quote, "Mr. Robinson explained that he established the area requiring drainage that is used to determine the validity of the Petition early in the process and said the area requiring drainage is not necessarily the same as the drainage area that ended up in the Schedule of Assessment."

In this particular case, there was a concession made, "Mr. Robinson conceded that the majority of owners did not sign the Petition and that the statement in his report was an error, however, he said the Petition satisfied the requirements of Section 4 of the Act, because there were sufficient landowner signatures representing at least 60% of the area requiring drainage pursuant to Section 4 (1)(b) of the Act." p. 17

28. In quoting the cross-examination of Sid Vander Veen on the 8th day of February 2022, arising from two Affidavits provided by Mr. Vander Veen on July 14, 2021 and December 20, 2021, he was asked in relation to Page 3 of the Engineer's Report whether the hatched area was on the Lament East property. (Page 39, Questions 117, 118). On page 40 of the cross-examination, Mr. Vander Veen responds as follows:

"Q. Does the description reflect the hatched area on page 3 of the engineer's report?"

A. The ---- absolutely. The hatched area is, I think, an accurate description of what Mr. Lament felt was the area requiring drainage."

29. It was, therefore, acknowledged by both parties to this action that the cross-hatched area was located within the Lament East property according to the Respondent.
30. It was submitted to the Referee that "similarly in the circumstances currently before the Referee, the Town could refer back the Petition to the Drainage Engineer if the parameters had been changed in any manner. However, the Town maintained that Mr. Morris could not, and should not, consider petitions; petitions not before him, as suggested by the Appellants in relation to Brzezcka and Watson Lands.

31. The Respondent submitted that the Engineer is accorded deference in determination of the area requiring drainage and validity of the Petition unless the Engineer has not fulfilled the required obligations of preparation and review. In this case, that Mr. Morris had adequately fulfilled his obligations in determining the validity of the Petition based on the area requiring drainage, and other criteria, is the position of Niagara-on-the-Lake.
32. The Respondents submitted that the map "page 3 of the engineer's report" can constitute the description of an area requiring drainage as recognized by the Tribunal in *Darmar-Tomlin Drain (Re) Interim Decision #1, City of Kawartha Lakes, 2017 ONAFRAAT 9 (CanLII)*.

This case dealt with issues under Section 58(4) of the Act where the Appellant claimed a report contained gross errors. The errors claimed were, among others, a watershed map which was not included in the drawings. The Respondent Kawartha Lakes in this matter in their opening statement conceded that based on the material filed by the Appellants, the Respondent accepts that the Report, as adopted, is missing several items that the Respondent characterized as an "administrative error". I quote Section 8(1)(a) of the Act which require the engineer to, "Prepare a report which shall include, (a) plans, profiles and specifications of the drainage works including a description of the area requiring drainage." The Tribunal took a different position with regard to the legislation in that it stated, "It is apparent that the legislation created several mandatory elements to be included in the engineer's report. These mandatory elements include: ... a description of the area requiring drainage (i.e. a watershed map)." This, of course, leads to some confusion whether a watershed map can be the description of an area requiring drainage.

33. In referring to *Vanderzwart v. Enniskillen (Township), 2003 ONDR 4 (CanLII)*, the Drainage Referee stated "I repeat, as I have in previous Decisions that Section 4 of the Drainage Act specifically refers to owners of an area requiring drainage, but does not refer to owners in the entire watershed." The claim by the Appellants that the Watson property and the Brzezka property are within the watershed assumes that they are in the area requiring drainage. The Respondents countered that this is simply not how the area requiring drainage is calculated.

34. The fact that, in most situations, the watershed and area requiring drainage are not limited to a single property but the situation of one Petitioner is not uncommon. (Reference: *Melidy vs. The Municipality of Bradford-West Gwillimbury*, 2020 ONAFRAAT 3 (CanLII)).
35. The Town submitted that throughout the cross-examinations, all of the deponents spoke of the differential nature of the properties in the watershed (cross-examinations of Stanley Lament, Steve Watson, Michael Brzezka and Brett Ruck). The Respondents maintain that both Watson and Lament, spoke of the differential nature of their properties, and their different needs regarding drainage. As such, the Respondents submitted that there were different areas requiring drainage. It is noted from the Report of the Drainage Engineer and the evidence given in this matter that neither Watson or Brzezka asked that the drain include their properties, nor was there any request by them to bring a Petition or join in the Petition of Mr. Lament.
36. At issue is the "administrative error". The Respondent states, "There no reason to believe that Town Council would have taken a different course in response to the Petition, particularly taking into consideration that Mr. Lament was the only petitioner, had this administrative error been corrected at that time. Further, this does not amount to a redefinition of the Area Requiring Drainage, as the Appellants alleged, as the area had not changed and has remained the same."
37. The Respondent submitted that: "The photographs submitted by Mr. Lament showed the water pooling only on the 5.3-hectare area in the Lament East property, provided Mr. Morris with sufficient rationale for his determination."
38. Finally, the Respondents submit that Sections 11 and 40 of the Drainage Act define in broad terms the responsibilities of the Drainage Engineer. In *M&M Farms vs. Kingsville (Town)*, the Referee discusses the required deference of the Drainage Referee to the Engineer in determining the area requiring drainage: "The current Drainage Act went further and determined that the decision as to the "area requiring drainage" should not be made by a municipal council composed of laymen subject to political pressures, but rather it specifically allocated that responsibility to a professional drainage engineer. *He*

is charged with the responsibility without guidelines, but pursuant to the directions of Section 11 of the Drainage Act." (Reference: M&M Farms vs. Kingsville (Town), 2004 ONDR 1 (CanLII))

39. As described in the M&M case, Counsel submitted that "physical features" which Referee Johnson had referred to in the Decision, *R. Hodgson v. Township of Mariposa*, 1993, where he states: "I would add in determining the area requiring drainage that there should be some physical characteristics which is different where the proposed drain ends from that of the surrounding area. This could be the extent of the grade; the kind of cropping that is taking place in the area and other physical characteristics." This applies to the case at hand where the Lament East Property is in vineyards with more intense draining than the norm for agricultural lands, being a three meter spacing between tile described by Mr. Lament about activities in the property.

Evidence of the Parties

40. As often is the situation, the matter proceeds to the Referee as a result of poor relationships between neighbours. Evidence was presented that Mr. Lament wished to purchase the Watson property when a prior owner put it up for sale. This did not occur. Shortly after the Watsons purchased their property, being a woodlot, Mr. Watson indicated that he and his wife had filed for a building permit on the property following the normal procedures. He maintained that Mr. Lament decided he did not want the Watsons to have a house in that location and called numerous authorities, one of which was the Niagara Peninsula Conservation Authority (NPCA). According to one of the Authority's staff, John Kukalis, it was noted that the drainage course thought to exist through Mr. Lament's land to the East was not present and "the upstream drainage to your site was not as previous maps indicated." Such maps also indicated that there was a watercourse identified by the Ministry of Natural Resources with fish habitat on the Watson property.
41. In addition to the defined watercourse not 'existing' on the Lament lands, on the Watson lands alterations had also occurred. The NPCA confirmed that they no longer regulated the watercourse. In this correspondence dated June 12, 2013, and Mr. Kukalis

indicated "alterations to this drainage feature are considered a local matter and governed by any by- laws that may apply". The email ended by advising that Mr. Watson contact the Municipality and the Ministry of Natural Resources before any work occurred on affected drainage areas.

42. A further follow-up in November of 2020, by the Niagara Peninsula Conservation Authority deemed the watercourses on the Watson and Lament property no longer regulated by the NPCA. This, however, did not mean that the watercourses did not exist or continue to exist. As this matter disintegrated, Mr. Lament, in his cross-examination indicated that his complaints were about a driveway placed in a watercourse that backed up his pond, that debris was placed on his property, or that there was a tree cut that fell on their property. There were numerous times that Mr. Watson built berms and blocked the outlet from the Lament pond. In response, Mr. Watson indicated that he had not blocked the outlet to the pond but had, as he had been complaining about for some time, blocked the North / South drain leading from the overflow from Highway 405 which appears to have entered both the Lament and Watson property.
43. During the process under the Drainage Act, Mr. Watson indicated that no one told him to file a Petition, but offered at one of the meetings with the engineer that he and his wife could file a Petition. Questioned as to whether he ever considered filing a Petition, he indicated 'no' (Watson cross-examination February 8, 2022, Question 372).
44. In follow-up, after denying he ever blocked the outlet from the pond on Lament property, he did indicate that the North/ South ditch which brings Concession 6 water and MTO water onto his property directly, he did block that outlet. He further acknowledged in this cross- examination that alterations might be subject to local by-laws. Mr. Watson was not allowed to answer in connection with the Niagara Peninsula Conservation Authority correspondence whether there was application of Common Law such as riparian rights with counsel indicating that this was not question that Mr. Watson could comment on. The Referee notes however that in the public domain was By-law No. 3941-05 by the Corporation of the Town of Niagara-on-the-Lake being, "a by-law to prohibit or regulate

the removal of topsoil, placing or dumping of fill, and the alteration of the grade of land within the entire Town of Niagara-on-the-Lake".

Needless to say, both Mr. Watson and Mr. Lament were unaware of this by-law, or were unaware of any enforcement of the same and its effect on their common law rights.

Evidence of Sid Vander Veen of R.J. Burnside & Associates Ltd.

45. Mr. Vander Veen who was retained by the Appellants provided in the documentary fashion in this Motion two affidavits and a cross-examination on those. The first Affidavit was dated the 14th day of July, 2021, to which was added Mr. Vander Veen's Curriculum Vitae, describing his experience with R.J. Burnside & Associates Ltd., together with his vast public sector experiences as Drainage Co-ordinator at the Ministry of Agriculture, Food and Rural Affairs. As such Mr. Vander Veen's experience is well known to the Referee. In addition, attached to his Affidavit was his acknowledgement of expert duty and a report attached as Exhibit "C" to his affidavit, being 17 pages in length together with numerous photos of the relevant properties.
46. In paragraph 9 of the July Affidavit Mr. Vander Veen quotes, "it is my professional opinion that:
 1. The petition does not meet any Drainage Act criterion for a valid Petition.
 2. The proposed project exceeds the authority granted by the Drainage Act.
 3. The Drainage Works are unnecessary.
 4. The Report does not propose that the drainage works to be constructed shall be continued to sufficient outlet and inappropriately proposes an allowance for insufficient outlet on the Brzeczka lands."
47. In his first report in July of 2021, in response to Paragraph 5 of the Report of Neal Morris, dated April 9th, 2020, in which Mr. Morris proposes to amend, Mr. Vander Veen stated that it suggests the area requiring drainage is for "properties owned by the petitioners for tile outlet" in which Mr. Morris uses the word "properties". Mr. Vander Veen thus noted that Mr. Lament only in the Petition described property Roll No. 2627-

090-019-0104 (the Lament East property) and not other properties as suggested in the report.

48. According to Mr. Vander Veen, "Mr. Stanley Lament's signature only represents 5.3 hectares in the area requiring drainage. Therefore, the Petition was signed by the following percentage of owners in the area requiring drainage:

$$\frac{5.3 \text{ ha}}{(5.3 \text{ ha} + 3.8 \text{ ha} + 4.6 \text{ ha})} = 38.7\%$$

He goes on to state, "Since this is below the 60% threshold identified in Section 4(1)(b) of the Drainage Act, it is also not a valid petition under this criterion."

(Pg. 7 of 17 Report of Sid Vander Veen dated June 30, 2021 Exhibit "C" of Affidavit of Sid Vander Veen dated July 14, 2021)

49. This interpretation, which will be discussed later, separates the owner or owners shown by the last revised Assessment Roll of lands in the area representing at least 60% of the hectareage in the area and refers back to "area requiring drainage as described in the Petition". The difficulty with this is that the Petition describes the entire roll number owned by Lament not 5.3 hectares.

Mr. Vander Veen also addresses the extent of the proposed work, more specifically, berms to be constructed on Highway 405 right of way, implying that the engineer is expanding the area described in the petition. In quoting an earlier decision, "In my view, this was not the purpose of the Petition and I am not aware of any authority that permits an engineer to substitute his views as to what is good for an area for his instruction. In result, he does not direct his attention to the needs of the petitioning area but to the area four times larger". Referee Clunis, Lawrence McKeen v The Township of East Williams and the Township of Adelaide, 1966 ONDR 1.

50. In his report Mr. Vander Veen further criticizes the Morris report by saying, "No mention is in the KSAL Report (K. Smart & Associates Limited) that the berm, pond, control structure or weir are necessary for stormwater detention. It is apparent that these features were included in the proposed drainage system to satisfy Mr. Lament's desire for "more

storage for irrigation". (Burnside Report June 30th, 2021, page 10). To paraphrase Mr. Vander Veen, no component of the berm, weir or water control structure is for the purpose of drainage as the definition in the Drainage Act does not extend to works for irrigation purposes (Burnside Report June 30th, 2021, page 10)

51. Mr. Vander Veen further notes that the Town of Niagara-on-the-Lake which is incorporated through a special Act has one of its principal purposes to provide the Town with authority to construct a communal irrigation system. Mr. Vander Veen quotes with approval *Belisle et al. v. the Township of Alfred & Plantagenet* (<https://canlii.ca/t/gk9dt>). In that decision, Referee O'Brien felt he could not stretch the meaning of the words 'proper drainage of land' to encompass erosion. The project being not by a municipal drain, but rather a natural watercourse. By analogy, Mr. Vander Veen suggests this petition falls outside the definition of drainage works.
52. Finally, in this report, Mr. Vander Veen mentions the existing swale on the Watson property, stating that it had significant slope and should allow any water from the Lament property to drain freely, and thus "there is no need for improved outlet" (page 11 of 17, June 30, 2021 Report). This omits the issue that Mr. Watson regularly blocks and installs berms and walk pathways which slow the access to improved outlet.
53. In his second Affidavit dated the 20th day of December 2021, Mr. Vander Veen provides further evidence as a response to the Responding Motion Record filed by the Town of Niagara-on-the-Lake containing the Affidavits of Mr. Stanley Lament and Mr. Neal Morris.
54. In an additional report dated December 17, 2021, described as Exhibit "A" to his Affidavit of December 20, 2021, Mr. Vander Veen quotes *Duane vs. the Township of Finch (1908)* (<https://canlii.ca/t/gg5x1>) "I wish to guard myself against laying down the proposition that 3 lots or part of lots may not constitute an area. There may be a case in which it would be proper for council to act upon a petition which described such a small area only, but it would need to be an extraordinary case. What I would wish to point out very plainly is that it is not proper to pick out any portion or portion of what is in fact a distinct basin requiring drainage. Subject to the discretion of the township council, the

majority, are to rule, but they must constitute a real majority, and in no case should the council permit the provisions of the Act to be abused by allowing a real minority to impose upon an actual majority." It should be noted that this was a case in front of Referee Henderson in 1908 and different Drainage Act requirements removed the discretion of Council.

55. On page 4 of 8 of his report of December 17, 2021, Mr. Vander Veen states, "In summary the engineer is implying that a property's specific drainage needs creates separate areas requiring drainage because each property has different types of drainage needs. I found no support for this concept in any Referee decision. In fact, it contradicts the direction provided by earlier decisions."
56. In describing each of the properties, Lament East, Watson and Lament West, regarding Lament West, Mr. Vander Veen quotes, "Under common law, the tile drainage system on the Lament West property does not have legal outlet. A tile drainage system was installed in 2005 that collects water and directs into York Road. In addition, land levelling occurred on this property, which results in drainage of some of this land being artificially directed to the North towards York Road. These actions are contrary to the common law as it relates to drainage and therefore it requires a legal outlet."
57. It should be noted that in the cross-examination of Stanley Lament on February 9, 2022, there were two best efforts undertakings to provide approvals that Mr. Lament has to outlet tile drains into the ditch on York Road for the Lament East and the Lament West property. At the time of this Decision and the Motion hearing on August 4th, 2022, such best efforts undertakings were not completed between the parties.
58. Mr. Vander Veen disagrees with Mr. Morris's suggestion and I quote, (page 4 of 8), "the Engineer is suggesting that the validity of the Petition can be based on a property owner's need for improved drainage". Mr. Vander Veen goes on to criticize the work which is being proposed in the engineer's report, as it is not in a petitioned property, meaning, I assume, the Lament West property. On page 7 of 8 in the above report, Mr. Vander Veen states, "The Lament West property is not a Petitioner, yet a catchbasin is being installed directly on the Lament West property and connected to the proposed Lament Drain with

nine meters of 200-millimeter diameter plastic pipe." He goes on to state, on page 8 of 8, "The engineer is proposing to construct features that are intended to resolve drainage issues specifically for that property."

59. In Mr. Vander Veen's report, he notes that it's not unusual for land outside the area requiring drainage to have benefits assessed if those lands are located along the drain, as the land benefits from the drainage work.
60. With regard to the description of lands intended by Mr. Lament in his Petition, in cross-examination, Mr. Vander Veen stated as follows (Question 123):

Q. Does that description reflect the hatch area on page 3 of the Engineer's Report?

A. The -----absolutely. The hatched area is, I think, an accurate description of what Mr. Lament felt was the area requiring drainage.

Finally, in the cross-examination, (Question 157):

Q. And just generally did you have any comments or observations concerning the nature of the drainage issues on the Brzezka property?

A. Yeah, I think I stated in my report, it's experiencing erosion problems

And Question 158

Q. And those erosion problems, in your opinion, are they distinct from the legal outlet being sought for the Lament East property that was the subject of the Petition?

A. Again, I don't see them as distinct. I see them all as an area that has a drainage problem. There is no doubt. There is no doubt that a municipal drain, a drainage system that resolves drainage issues, would help the area, but that's not the point of my report. My report was: Is there a valid petition?"

This issue of an erosion problem varies from the quote of Referee O'Brien prior in Mr. Vander Veen's report where Referee O'Brien could not stretch proper drainage of lands to encompass erosion.

Evidence of Neal Morris, Engineer, K. Smart & Associates Limited

61. Much of Mr. Morris's evidence was raised by Counsel in their positions on the Motion, however, in addition to his reports Mr. Morris underwent cross-examination in which there were a number of errors acknowledged. In dealing with Section 5, Authority for Report on Page 6 of the Report dated April 9, 2020, it is obvious that, at the point of drafting there may have been an effort to include the Lament East property, the Watson property and the Lament West property. The portions of water flowing from Highway 405 and Concession 6 were not deemed by Mr. Morris as necessary at that point to be included in the area requiring drainage. The following passage in the cross-examination of Mr. Morris on the 8th day of February 2022, this to the Referee explains how confusion arose with regard to the Report. In his cross-examination, Mr. Morris acknowledged that initially, prior to the Petition being issued in the scoping meeting, an Agreement Drain was proposed as an alternative prior to filing the Petition. When this did not work, according to the cross-examination of Mr. Morris, at page 62 of the cross-examination, paragraph 192:

Q. Okay. So your present position differs from the action you took on this petition Originally?

A. Yes. Well, so as I went through the process, I refined my area requiring drainage to specifically deal with this, with the pond issue. I originally had a plan where we were willing to incorporate the ditch all the way to the Concession 6 Road, but was - through discussions with the landowner, they weren't interested in that, and that's why we dropped it there. So the works are always sort of worked with the landowners to come up with a solution.

This explains some of the mapping found in the Drainage Report. More specifically found in the Watershed Plan dated March 31, 2020, drawing 1 of 8, there are various Watershed Plans. The largest one includes the Lament West property, the Watson property and the Lament East property together with portions of York Road, Concession 6 and Highway 405. In the same map, an intermediate watershed is shown which includes portions of the Watson property, the Lament East property having an area of 5.3

hectares. In the Legend, to add to confusion on the same map, it shows circled 5.3 - approximate hectares in watershed. While the map at page 3 of the Report without describing the area shows as cross-hatched within Lot 141 "the area requiring drainage".

62. Mr. Morris, in his discussions regarding the Lament East and West property, decided the need for legal outlet and raised the issue of the prescribed right to drain onto road allowances. Finally, he mentioned the need for tiling when, in fact, the tiling already existed in the property. Mr. Morris 'correctly' described the fairly involved process he had in arriving at the area requiring drainage but he does not acknowledge that his documentation left doubts as to the size of the watershed, whether the watershed equated in one diagram to the area requiring drainage, and failed in the Referee's opinion to address the intermediate watershed which may have met the requirements of the Act under Section 4(b) being the Watson lands and the Lament East lands.
63. Mr. Morris defended the request for the additional control devices to accommodate Mr. Lament's desire for irrigation stating that such can be enabled under Section 24 of Special Benefits.
64. Finally, in cross-examination, there was an acknowledgement that the report of K. Smart was presented to Council before a meeting was held with the Watsons, who were seeking a further meeting. This was confirmed by the Drainage Superintendent, Brett Ruck, in his cross-examination. Mr. Ruck after saying that in considerable back and forth between the parties, stated, (Cross-examination Feb. 9, 2022, page 26, question 66), "..... you know, at the point where we made the decision, or I recommended that we move forward was to be able to put the process into the appeal periods." This was suggested by the Superintendent that it was easier to address later than keep going back and forth. On page 27, same question, "So there was a discussion that if there wasn't - - even if there was something better, if it goes into the process, I still can hold a meeting even after it's been approved and going into the processes of the Tribunal." Further, I quote Mr. Ruck on his cross-examination, " this is where I told Council that if we put it into the appeal process, at least there is a timeline for people to act on things, whereas we were just going back and forth, there is no timeline."

65. In the process of this matter, the Referee was concerned with regard to the attitude of both the Superintendent and the Engineer in proceeding in order through the processes of the Drainage Act and the Tribunal. I raised this issue to counsel at the hearing of the motion and on the basis of their joint submission of September 2nd, 2022, about the premature nature of any proceeding under the provisions of Section 58 and affirming their view of my jurisdiction under Section 47, I enquired further as to the nature of the Referee's jurisdiction in relation to Section 58 of the Drainage Act.

66. In *Broeders vs. Wolfe Island (Township)* 1987 ONDR1, in his Decision, Referee Turville in reviewing his jurisdiction, mindful of Section 101 of the Drainage Act, states,

"The Referee's jurisdiction is set out in Sec. 106(2) where an appeal lies to the Referee from the decision of the Tribunal on certain grounds, Sec. 106(2):

Subject to section 101, the Referee has jurisdiction to hear appeals from any decision or order of the Tribunal and for such purposes may make any order that the Tribunal might have made and may substitute his opinion for that of the Tribunal."

Sec. 101, "in any application, appeal or reference under sections 8, 10, 48, 49, 50, 54 64, 65 and 75 the decision of the Tribunal is final. 1980, c. 1, s. 28".

The Referee's jurisdiction is set out in Sec. 106(2) where an appeal lies to the Referee from a decision of the Tribunal on certain grounds.

Sec. 106(2), "Subject to section 101, the Referee has jurisdiction to hear appeals from any decision or order of the Tribunal and for such purposes may make any order that the Tribunal might have made and may substitute his opinion for that of the Tribunal."

It follows that an appeal lies to the Referee from a decision of the Tribunal subject to Sec. 101, from the following sections of the statute,

Sections 5, 6, 45, 58, 62, 72 & 76.

Finally, it would not be amiss to again quote the one section that clothes the power upon The Ontario Drainage Tribunal. Sec. 51(1), "On any appeal or reference to the Tribunal under this Act, the Tribunal shall hear and determine the matters and, where

not so provided, may make such order and direct such things to be done as are authorized by this Act and as it considers proper to carry out the purpose of this Act."

67. Later, Referee Turville states, "This provincial legislation has provided the vehicle through the Ontario Drainage Tribunal to see to it that a scheme does not become bogged down at the local level. Normally, council has been in the best position to decide what is best in the public interest. The Ontario Drainage Tribunal is now, on an appeal to it, to make that decision."
68. Referee Turville goes on to confirm the jurisdiction of the Referee in this matter, and I quote, "It must now however be recognized that the Ontario Legislature intended The Ontario Drainage Tribunal to make decisions on appeals to it and to direct council as to whether to proceed or not, subject to an appeal to the Referee under Section 106. Obviously, on an appeal to the Tribunal the general rule that local council are more familiar with local conditions and is best to determine what is or is not in the public interest can no longer be the rule of thumb under this statute."
69. Given the position of both the Appellant and the Respondent in this matter, the Referee for the reasons described in the Broeders' decision and in order to avoid an abuse of process will take jurisdiction of the correction of the gross error(s).
70. To that end, it the position of the Referee that a number of issues which were raised in this motion such as legal outlet and to which best efforts undertakings given in the cross-examination of Stanley Lament not being answered, the matter should proceed with the engineer completing a correction in his report subject to consultation with engineer Vander Veen if he is willing to do so, and the matter be brought before the Referee in six months.

Is the Petition Valid?

71. Throughout the Motion process, there has been considerable discussion with regard to validity of the Petition. Arguments raised by the Appellants relate to Paragraph 5 of the Report of K. Smart Associates Limited dated April 9th, 2020. The Respondent's argument being that of K. Smart Associates Limited in this matter, is that the mapping on

Page 3 correctly shows the area requiring drainage, and secondly, the area requiring drainage is found within the property described as Lament East, and the Petition itself correctly describes the property through the provision of its roll number as described in paragraph 8 of this Decision. There has been considerable discussion and the positions of both parties in this Motion as to the propriety of the definition of area requiring drainage limited to one parcel.

72. The Referee finds that *M&M Farms Ltd. v. The Corporation of the Town of Kingsville and Bruce D. Crozier Engineering Inc.* (2004 OMDR 1) is a case that most closely mirrors the situation with the Lament Drain. That Decision arose from a hearing held on the 20th day of July, 2004 before Referee O'Brien. In that matter, there were three different property owners with property having several different uses. In the situation before me, we have a vineyard operation and a woodlot with storage buildings which Mr. Watson hoped to turn into a residence. Similar to this matter, there were changes in positions of the parties as the engineer worked with the various parties ending up in the M&M decision with four different reports before the matter proceeded to Appeal. In that decision, Mr. Ed Dries, giving expert evidence, stated, in his opinion, the appointed engineer in this matter did not correctly identify the area requiring drainage for two reasons. Firstly, when he was examined on discovery he stated 'that normally the "area requiring drainage" was that was normally spelled out in the Petition.' Mr. Dries said only in rare circumstances would the Petition correctly identify the "area requiring drainage". Secondly, in this case the engineer described the "area requiring drainage" as being the entire watershed which would rarely be the case and certainly not correct in the circumstances of this drain.
73. On behalf of the Municipality, the engineer, E. Paul Elston, addressed the issue from the point of view of the need of legal outlet, as opposed to the historical physical saucer. "Mr. Elston further advised that the historical saucer approach encountered difficulties where the land was fully tiled and only required an outlet and/or where the land is uniquely flat as a result of agricultural contouring."

74. In M&M Referee O'Brien quoted with approval the following: "The saucer approach to the area requiring drainage is still the historic benchmark, but cases have proceeded to look at other features such as physical features. Referee Johnson had referred to in the decision R. Hodgson and the Township of Mariposa 1993; "I would add that in determining the area requiring drainage there should be some physical characteristic which is different where the proposed drain ends from that of surrounding territory. This could be the extent of the grade; the kind of cropping that is taking place in the area, or other physical characteristics."

Referee O'Brien goes on to state, "It should be noted that statement was made by the Referee (Referee Henderson as quoted by Referee Turville in the Westendorf Decision) in 1929 in a period when the horse was still the primary source of energy on the farm. Farms were small, tile drainage was limited and modern contouring practices (with the use of lasers and G.P.S.) were totally unknown. It becomes harder and harder to apply the saucer concept to the context of modern farming and it has no application whatsoever if the only requirement is to obtain a legal outlet when one is not available."

75. Referee O'Brien in M&M added, "The concept of land use has emerged as well as a guide to drainage engineers.....It should be noted that 'the lands requiring drainage' the decision must not only evaluate the objective physical condition of the lands in question, but also must examine the land use factors, all of which together must be weighed in determining which lands require drainage."
76. Finally, Referee O'Brien states of the Engineer, "He must act professional and honestly when confronted with modern farming methods that completely alter the landscape, creating circumstances that were never contemplated in previous generations and he must adjust to current needs to keep the Drainage Act relevant."
77. It should be added, in M&M Farms that the final decision was that the Petition was valid with the signature of the one owner and the processes of the Act proceed on the basis of a valid petition.

78. In his report of June 30th, 2021, which was attached to Mr. Vander Veen's affidavit, Mr. Vander Veen, relying on the statements of Mr. Morris in section 5 of the report of K. Smart, pointed out that the petition was not valid under Section 4(1)(a) of the Drainage Act because he took the position that the defined area requiring drainage was the three properties, Lament West, Watson and Lament East. This, of course, was before Mr. Morris attempted to change the paragraph during the course of this Motion.
79. In the same report on pages 6 and 7 of 17, in viewing the validity of the petition with owners representing 60% of the land, Mr. Vander Veen stated, "effectively Mr. Stanley Lament's signature only represents 5.3 ha. in the area requiring drainage. He then goes on to calculate the percentage of the owners in the area requiring drainage and deemed that to be 38.7%. However, this report is in error in that 5.3 hectares does not represent the land described in the Petition which is the assessed property known as the Lament East property being 17 hectares. The Referee views this calculation as incorrect, as the Act states in Section 4(1) ... an area requiring drainage described in the Petition may be filed with the Clerk of the local municipality in which the area is situate by "(b) the owner or owners as shown on the last assessment roll of the lands in the area representing at least 60% of the hectarage in the area". The 5.3 hectares does not represent the land on the last revised assessment roll, 17 hectares does. Furthermore, Mr. Vander Veen uses a different area requiring drainage to arrive at his calculation not as shown on the Mapping from Page 3 of the Morris Report attached in Appendix A, but as shown in paragraph 5 of the Morris Report.
80. There is a difference between "area requiring drainage" and "lands in the area" the phrase found in Section 4(1)(b). To aid in the future, a refinement in this section could better serve the parties in a finding of validity of the petition given that the report in this matter lays out two different descriptions of the "area requiring drainage". Since the Drainage Act requires a liberal interpretation, it is possible to have a valid petition where the report flowing from it is erroneous.

Is the Report Valid?

81. Having found that the petition is valid, the Referee has grave concerns about the validity of the report attempting to implement the Petition. The issue with the report is the process used by the engineer to proceed with this matter. It is the opinion of the Referee that, Mr. Morris in attempting to please the various parties and obtain some form of negotiated solution, created three watersheds. The first larger one including the Lament East, Lament West and Watson property, as well as portions of the Highway 405 road allowance, Concession 6 road allowance and York Road, failed to receive consent. In his second Schedule, the drawing dated March 31st, 2020, containing the watershed plan being 1 of 8 there is an intermediate watershed which appears to address the area requiring drainage and the possibility of proceeding with the area requiring drainage for only the watershed described as the Watson and Lament East 5.3 hectares, but totaling an assessed 17 hectares.
82. Finally, Mr. Morris settled upon the drawing on page 3 with the hatchmarks, while maintaining in Paragraph 5 an incorrect description of the area requiring drainage and an incorrect calculation of the requirements of Section 4 of the Act.
83. While the Referee recognizes that during the process of an appeal and in the case the Motion, it is possible to arrange for an amendment of a report, and to bring other parties in, i.e. engineers, to provide advice and support with regard to the same. I refer to *Bosanquet (Town) v Eizenga et al*, 1999 ONDR 2. In that decision Referee O'Brien, in one of his interim orders, required that the engineer, having made the report, "was to consult forthwith with two other engineers with respect to the assessment and design." In this matter, similar to that, it would be my request of Appellants that they have Mr. Vander Veen on consent, as their expert witness and engineer, consult with Mr. Morris on revisions to the report of K. Smart Associates Limited dated April 9th, 2020.
84. The above-described decision was indicative of the ability of the Referee in matters such as this to amend and order the consultation with regard to a report before the Referee. In this situation, however, the amendment that was requested during the course of this motion caused the Referee considerable disquiet in that, in requesting an amendment to the Report described in paragraph 10 of this Decision, is the Referee's concern that the Engineer as set out in paragraph 15, knew of the error in the report and failed to approach Council in this matter. While evidence was given by the Drainage Superintendent that he

was of the opinion that this would not be a problem for the Council, the engineer had a duty to Council which he did not uphold.

85. The Council of the Town of Niagara-on-the Lake had a right under Section 58, more specifically, Section 58(3) where the provisional by-law authorizing proceedings under the Drainage Act may be repealed, "at any time before work is commenced and before any assessment is levied against the lands assessed." In that situation, of course, Council was to pay all expenses in connection therewith out of the general funds of the Municipality. Further the Council had the right under Section 58(4) and I quote, "If, at any time, after the by-law is passed and before any assessments are levied, a gross error in the report is found, the Council of Municipality may, on notice to all persons assessed, apply to the Tribunal to correct the error." This did not occur.
86. In a case dealing with the issue of Section 58 and the quashing of certain by-laws, I refer to *Broeders vs. Wolfe Island (Township)* 1987 ONDR 1, a decision of Referee Turville. In that decision Referee Turville states, "Mr. H. Todgham, a professional engineer specializing in land drainage for almost forty years and certainly recognized as the most experienced engineer practising then (1987), gave examples of situations that would cause an initiating municipality to repeal a by-law under the authority of Sec. 58(3). In his experience it usually arose when some unforeseen event occurred ie: the death of the prime mover in a petition. The situation described by Mr. Todgham, certainly suggest that the beneficiaries of the work are the petitioners and the township is analogous to that of a trustee. In any event, it is obvious that the initiating township and the petitioners do work side by side and are always aware of what each is doing. Certainly, a municipality is at liberty to repeal a by-law, save as to the limitations imposed this legislation. There appears in the statute no restriction on a local authority to repeal a by-law other than by implication that it should not contravene any prior order or decision of the Court of Revision, Tribunal, Referee and The Divisional Court." (pg. 14).
87. I have no hesitation in finding that the failure in the initial report to change the report to the proposal received during the course of this hearing, represented a gross error. In addition, I find that a number of errors in the report confirm my finding on this particular

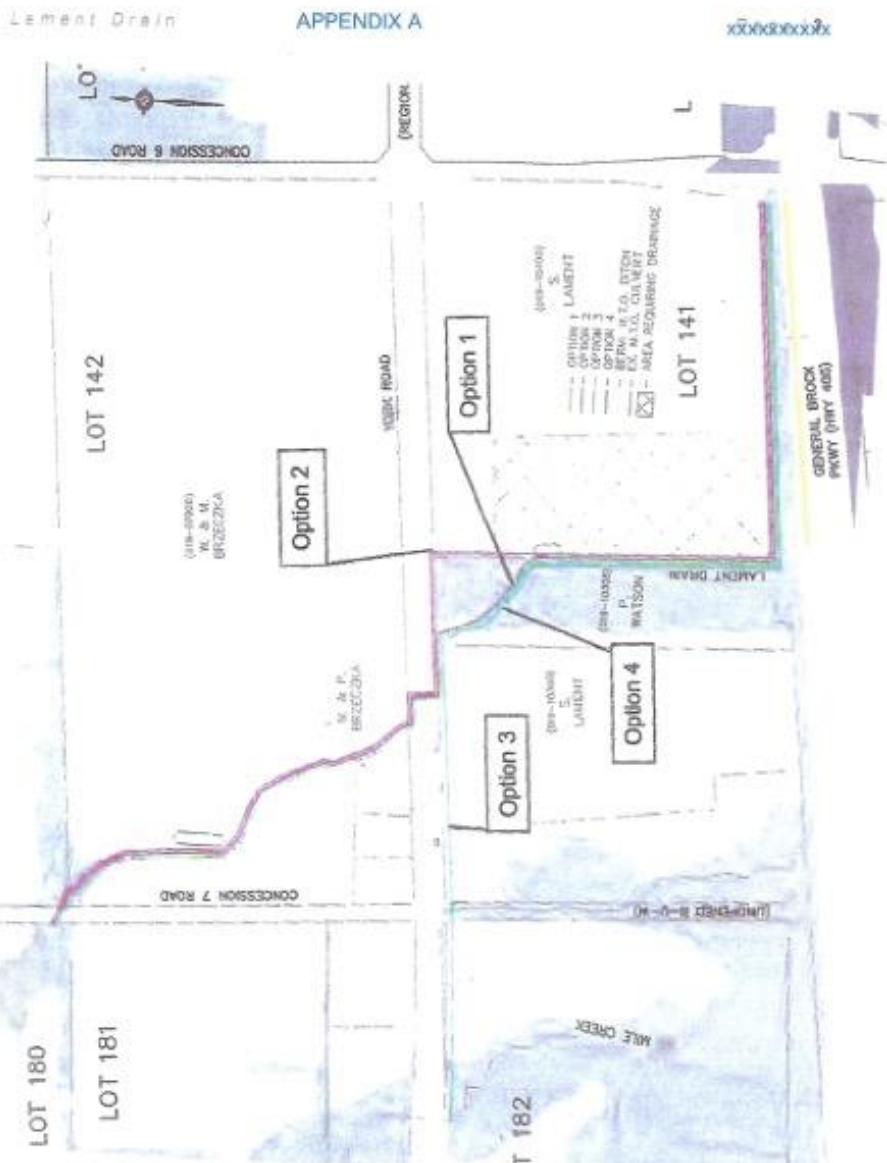
section. Whether Council when advised of this issue would have been displeased and repealed the by-law is a moot point. The issue is that it was not advised, and in that, I find the engineer did not fully comply with his duties as found in Section 11 of the Act:

"11. The engineer shall to the best of the engineer's skill, knowledge, judgment and ability, honestly and faithfully, without fear of, favour to or prejudice against any person, perform the duty assigned to the engineer in connection with any drainage works and make a true report thereon."

88. Given the position of both the Appellant and the Respondent in this matter, the Referee for the reasons described in the Broeders' decision and in order to avoid an abuse of process will take jurisdiction of the correction of the gross error(s).
89. To that end, the position of the Referee is that a number of issues which were raised in this motion such as legal outlet and to which best efforts undertakings given in the cross-examination of Stanley Lament having not been answered, the matter should proceed with the engineer completing a correction in his report subject to consultation with engineer Vander Veen if he is willing to do so, and the matter be brought before the Referee in six months or sooner if clarification is needed.
90. The Referee also addresses the matter of costs. Given the situation as to how this matter proceeded, the lack of notice to Council, together with my findings on the Report, the Referee finds that costs on a partial indemnity basis shall be granted to the Appellants, but in accordance with Section 118(2), subject to any internal arrangements made between the Municipality and K. Smart Associates Limited.

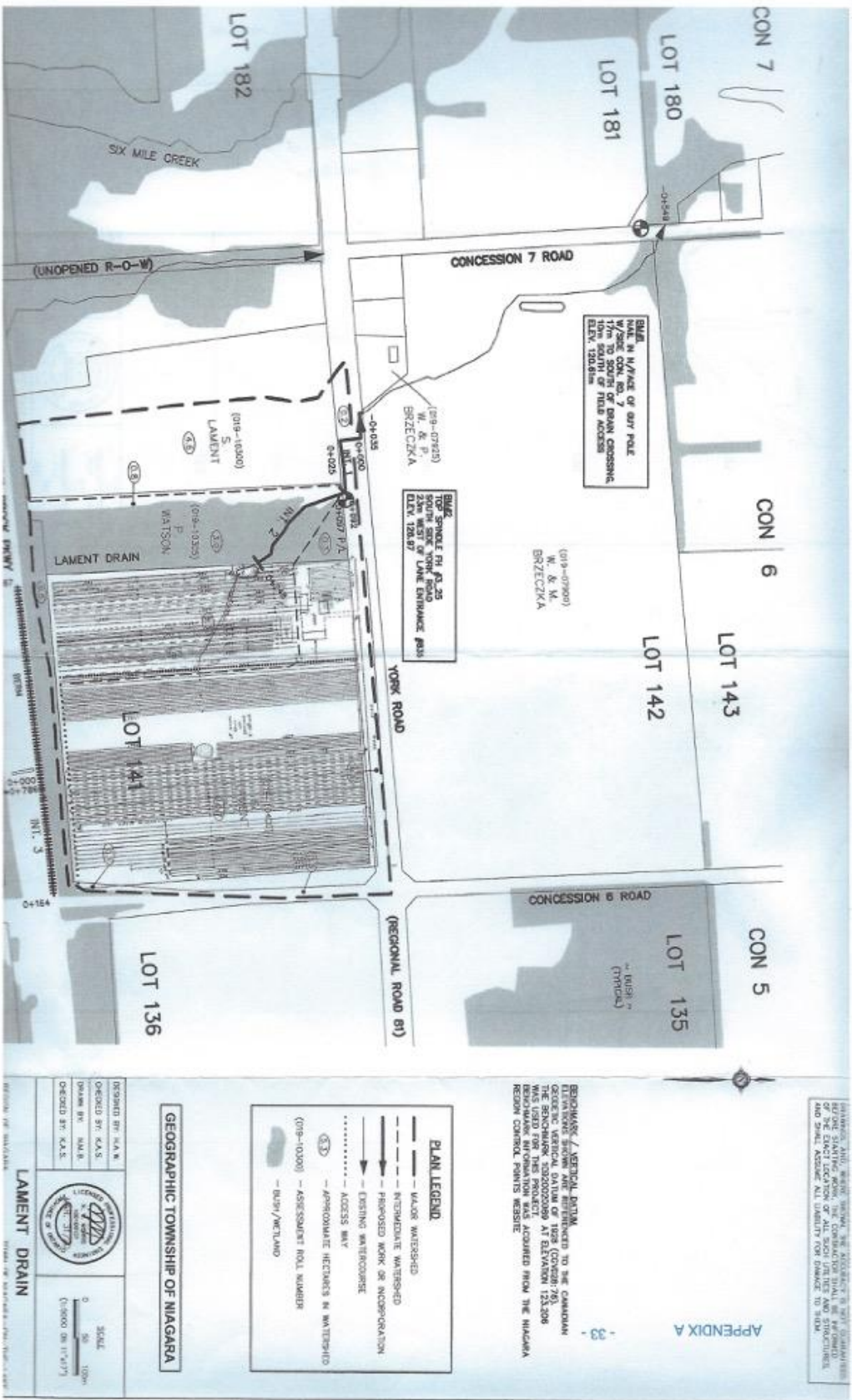
DATED at Strathroy, this 19th day of October, 2022

ROBERT G. WATERS
ONTARIO DRAINAGE REFEREE



along the south side of the road to Roll No. 019-10400, and then south along the property line to the existing ditch on Roll No. 019-10400 and then improve and incorporate the existing ditch to the west side of Concession 6 Road. This option would have a tile system from the east side of Roll No. 019-10300 along York Road, then south along the property line to the existing pond on Roll No. 019-10400. An

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THESE PLANS, SPECIFICATIONS AND CONTRACT DOCUMENTS SHALL BE RECORDED AT THE REGISTRY OF DEEDS AND SHALL REMAIN THE PROPERTY OF THE DESIGNER. THE DESIGNER SHALL BE RESPONSIBLE FOR THE EXACT LOCATION OF ALL SUCH UTILITIES AND STRUCTURES AND SHALL ASSUME ALL LIABILITY FOR DAMAGE TO SUCH UTILITIES AND STRUCTURES.

BENCHMARK / VERTICAL DATUM
 THE BENCHMARK DATA FOR THIS PROJECT IS TO THE CANADIAN GEODETIC VERTICAL DATUM OF 1929 (CGVD29). THE BENCHMARK 1020002089 AT ELEVATION 123.208 WAS USED FOR THIS PROJECT. ALL ELEVATIONS ARE IN METERS UNLESS OTHERWISE NOTED. BENCHMARK DATA IS ACQUIRED FROM THE NIAGARA REGION CONTROL POINTS WEBSITE.